

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: BPS DIRECT, LLC and CABELA'S, LLC, WIRETAPPING	MDL NO. 3074 2:23-md-03074-MAK
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PLAINTIFFS' NOTICE OF ELECTION TO STAND ON CONSOLIDATED CLASS ACTION COMPLAINT, AND REQUEST FOR ENTRY OF FINAL ORDER

On December 5, 2023, the Court entered an order dismissing Plaintiffs' claims against Defendants BPS Direct, LLC and Cabelas, LLC for lack of standing, but granting Plaintiffs Cornell and Montecalvo leave to file an amended complaint by January 5, 2024. ECF No. 82 at 3.

Plaintiffs Cornell and Montecalvo maintain that the allegations in their Consolidated Class Action Complaint (ECF No. 53) demonstrated their standing under Article III. Plaintiffs Cornell and Montecalvo therefore intend to stand on the allegations in their consolidated complaint for purposes of appeal. For this reason, Plaintiffs Cornell and Montecalvo will not file an amended complaint by January 5, 2024, and they do not seek to extend that deadline.

Under the Third Circuit's precedents, the order of December 5, 2023, was not a final, appealable order. *See Weber v. McGrogan*, 939 F.3d 232, 237 (3d Cir. 2019) ("a dismissal without prejudice and with leave to amend isn't a final order").

Accordingly, although Plaintiffs Cornell and Montecalvo disagree with the Court's decision, Plaintiffs Cornell and Montecalvo respectfully request that this Court enter a final order so that they may begin their appeal.

Date: December 15, 2023

By: /s/ Nicholas A. Colella
Nicholas A. Colella (PA Bar # 332699)
Gary F. Lynch (PA Bar # 56887)
Kelly K. Iverson (PA Bar # 307175)
Jamisen Etzel (PA Bar # 311514)
Elizabeth Pollock-Avery (PA Bar # 314841)
Patrick Donathen (PA Bar # 330416)
LYNCH CARPENTER, LLP
1133 Penn Avenue, 5th Floor
Pittsburgh, PA 15222
Tel: (412) 322-9243
NickC@lcllp.com
Gary@lcllp.com
Kelly@lcllp.com
Jamisen@lcllp.com
Elizabeth@lcllp.com
Patrick@lcllp.com

Kate M. Baxter-Kauf
Karen Hanson Riebel
Maureen Kane Berg
LOCKRIDGE GRINDAL NAUEN P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis, MN 55401
Tel: (612) 339-6900
kmbaxter-kauf@locklaw.com
khriebel@locklaw.com
mkberg@locklaw.com

Katrina Carroll
LYNCH CARPENTER, LLP
111 W. Washington St. Suite 1240
Chicago IL 60602
Tel: (312) 750-1265
katrina@lcllp.com

Joseph H. Kanee
MARCUS & ZELMAN LLC
701 Brickell Avenue, Suite 1550
Miami, FL 33131
Tel: (786) 369-1122
joseph@marcuszelman.com

Ari H. Marcus (PA Bar # 322283)
MARCUS & ZELMAN LLC
701 Cookman Avenue, Suite 300
Asbury Park, NJ 07712
Tel: (732) 695-3282
ari@marcuszelman.com

Plaintiffs' Co-Lead and Liaison Counsel

Carey Alexander
SCOTT & SCOTT
ATTORNEYS AT LAW LLP
230 Park Avenue
Ste 17th Floor
New York, NY 10169
Tel: (212) 223-6444
calexander@scott-scott.com

MaryBeth V. Gibson
THE FINLEY FIRM, P.C.
3535 Piedmont Rd.
Building 14, Suite 230
Atlanta, GA 30305
Tel: (404) 978-6971
mgibson@thefinleyfirm.com

Steven M. Nathan
HAUSFELD LLP
33 Whitehall Street Fourteenth Floor
New York, NY 10004
Tel: (646) 357-1100
snathan@hausfeld.com

James J. Pizzirusso (Md. Bar No. 20817)
HAUSFELD LLP
888 16th Street N.W. Suite 300 Washington, D.C.
20006
(202) 540-7200
jpizzirusso@hausfeld.com

Plaintiffs' Steering Committee